IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1696 of 2007()

SC.606/2000 of ADDL. SESSIONS COURT (ADHOC), KOLLAM
LP.3/2005 of JUDL.MAGISTRATE OF FIRST CLASS, SOUTH PARAVOOR
CRIME NO.108/98 OF CHATHANNOOR POLICE STATION

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PETITIONER: 4TH ACCUSED

MANOJKUMAR, AGED 35 YEARS,
S/O KARUNAKARAN, KALLUVILA PUTHAN VEEDU,
MEENAD, PARAVOOR.

BY ADV. SRI.MANU SOLOMAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1696 of 2007

Dated this the 29th day of May, 2007

ORDER

Petitioner is the 4th accused in Crime No.108/98 of Chathannoor Police Station. Final report has already been filed. Cognizance has been taken of the offences punishable, inter alia, under Section 307 read with 149 I.P.C. The petitioner was not available for arrest. The trial against the co-accused proceeded and they have already been found not guilty and acquitted by the Sessions Judge. The petitioner now wants to surrender before the court below. He is willing to surrender and co-operate with the court. He has come to this Court with the prayer that proceeding against him may be quashed or in the alternative, the court below may be directed to consider his application for bail on merits, in accordance with law and expeditiously.

2. It is by now trite - after the decision of the Full Bench in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552] that the mere fact that the co-accused who faced trial have been found not guilty and acquitted on the basis of the materials available in the trial held in their case, is no reason for the absconding co-accused to claim any privilege or advantage. The petitioner did not face trial and there was no question of adducing any evidence against him in the trial against

the co-accused. In these circumstances, the assumption that no useful purpose would be served even if the petitioner faced trial is certainly unjustified. I am satisfied that the petitioner must appear before the court below and take part in the further proceedings.

3. The apprehension that the petitioner's application for bail will not be considered by the court below on merits, in accordance with law and expeditiously is found to be without any substance. I have no reason to assume that the learned Judge would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This Crl.M.C is, in these circumstances, dismissed. But with the specific observation that if the petitioner appears before the learned Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-